

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

SANDRA SINCLAIR, a single person,

Plaintiff,

v.

USAA CASUALTY INSURANCE
COMPANY, a foreign insurer,

Defendant.

NO. 3:22-cv-05263-DGE

JOINT STIPULATION *AND*
STIPULATED MOTION FOR
CONTINUANCE OF TRIAL
DATE AND AMENDMENT
OF SCHEDULING ORDER

Pursuant to this Court's August 25, 2022 Order Setting Jury Trial and Pretrial Dates, Dkt. 14, and Fed. R. Civ. P. 16(b)(4) Plaintiff Sandra Sinclair and Defendant USAA Casualty Insurance Company, by and through their respective counsel of record, hereby jointly move this Court to continue the trial date for approximately eight months from September 11, 2023, to May 28, 2024 and amend the order setting pretrial deadlines in accordance with the continued trial date. There are two primary reasons for the requested continuance. First, Defendant attempted to send expert disclosures to Plaintiff on March 6, 2023 in compliance with the deadline, but Plaintiff did not receive Defendant's expert disclosure until April 3rd, just the day before the deadline to disclose

JOINT STIPULATION *AND* STIPULATED MOTION FOR CONTINUANCE
OF TRIAL DATE AND AMENDMENT OF SCHEDULING ORDER - 1

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1 rebuttal witnesses, which clearly prejudiced Plaintiff and prevented timely disclosure of
 2 a rebuttal expert. In addition, Defendant has still not provided discovery documents that
 3 were addressed at the parties' discovery dispute hearing on April 5, 2023, and that were
 4 initially requested back on December 12, 2022. Given the circumstances, the parties
 5 agree that a trial continuance is necessary to avoid prejudice to the parties, allow time
 6 for additional and necessary discovery, and allow the parties to full prepare for trial and
 7 engage in a meaningful mediation before trial.

8 **FACTS**

9
 10 On March 31, 2023, counsel for Defendant USAA Casualty Insurance Company
 11 attempted to send counsel for Plaintiff an email with an attachment that included
 12 Defendant's expert disclosures.¹ This email was "kicked-back" due to the attachment.²
 13 Counsel for Defendant then advised counsel for Plaintiff that this email had originally
 14 been sent to Plaintiff's counsel on March 6, 2023 in accordance with the expert
 15 disclosure deadline, but it was not in fact received. In fact, it was not until April 3, 2023
 16 that Plaintiff's counsel was able to access Defendant's expert disclosures - one day
 17 before the deadline for disclosing rebuttal experts - clearly prejudicing Plaintiff's ability
 18 to adequately prepare rebuttal experts, conduct discovery depositions of Defendants'
 19 experts, and otherwise timely prepare for trial.³

21
 22 ¹ Declaration of Patrick R. West In Support of Joint Stipulation And Stipulated Motion For Continuance
 23 Of Trial Date And Amendment Of Scheduling Order ("West Decl."), **Exhibit A**, Email Correspondence
 Between Counsel.

² Id.

³ Id. at p.

1 In addition, on December 12, 2022, Plaintiff sent discovery requests to Defendant
 2 requesting multiple documents, including but not limited to contract documents and
 3 correspondence between Defendant and Auto Injury Solutions, Inc. (“AIS”).⁴
 4 Defendant did not identify or provide the specific documents that Defendant USAA sent
 5 to AIS for Plaintiff Sandra Sinclair’s PIP claim.⁵ In fact, the only documents that were
 6 provided from AIS were the final AIS reports that had previously been provided to
 7 Plaintiff before litigation commenced. The parties exchanged correspondence regarding
 8 this discovery issue and ultimately appeared before the Court on April 5, 2023 to
 9 address these issues, but they are still pending.⁶ Further, the Plaintiff subpoenaed AIS
 10 for these same documents, but AIS has also not timely provided these documents.⁷

12 ARGUMENT AND AUTHORITY

13 This court may modify its case schedule if it finds good cause to do so. Fed R. Civ.
 14 P. 16(b)(4). The decision to grant or deny a requested continuance lies with the broad
 15 discretion of the district court, and will not be disturbed on appeal absent a clear abuse
 16 of discretion. *United States v. Flynt*, 756 F.2d 1352, 1358, *as amended*, 764 F.2d 675
 17 (9th Cir. 1985). The relevant factors for appellate review of an order granting or denying
 18

19
 20 ⁴ Id., **Exhibit B**, Plaintiff’s First Interrogatories and Requests For Production of Documents to Defendant
 USAA Casualty Insurance Company.

21 ⁵ Id., **Exhibit C**, Defendant USAA Casualty Insurance Company’s Response To Plaintiff’s Interrogatories
 22 Set One; **Exhibit D**, Defendant USAA Casualty Insurance Company’s Response To Plaintiff’s
 Requests For Production – Set One.

23 ⁶ Id., **Exhibit E**, Counsel’s Correspondence Re: Discovery Dispute.

⁷ Id., **Exhibit F**, Subpoena to AIS, Declaration of Service, and Email Correspondence Between Plaintiff’s
 Counsel and AIS Counsel.

1 a motion for continuance are: (1) diligent efforts by the parties requesting continuance;
 2 (2) usefulness of the continuance requested; (3) inconvenience of continuance to other
 3 parties and (4) prejudice to requesting party caused by a denial of the requested
 4 continuance. *Id.*

5 Plaintiff and Defendant both made diligent attempts to engage in discovery. Both
 6 parties have propounded interrogatories and requests for production, taken depositions,
 7 and disclosed experts in this case, but the fact that Defendant's expert disclosure was
 8 not actually received by Plaintiff until one day before the deadline for disclosure of
 9 rebuttal witnesses has clearly prejudiced the Plaintiff. In addition, the discovery issues
 10 that have not been fully resolved yet will likely require additional discovery that cannot
 11 be completed with the current deadline.
 12

13 Given these reasons and to insure that all parties have ample time to conduct
 14 necessary discovery and timely disclose expert reports in compliance with the Court's
 15 deadline, the parties agree that a trial continuance and extension of deadlines is
 16 appropriate and necessary to prevent either party from being prejudiced. The
 17 continuance will also allow time for the parties to meaningful engage in mediation prior
 18 to trial. No prior continuances have been requested and the four month continuance will
 19 not substantially inconvenience either party
 20

21 The parties therefore jointly request that a schedule following this table be ordered:

EVENT	CURRENTLY SCHEDULED DEADLINE	PROPOSED DEADLINE
Disclosure of expert testimony under FRCP 26(a)(2)	March 6, 2023	

1	Disclosure of rebuttal expert testimony under FRCP 26(a)(2)	April 4, 2023	
2			
3	All motions related to discovery must be filed by	April 14, 2023	
4	Discovery completed by	May 15, 2023	
5			
6	All dispositive motions must be filed by	June 13, 2023	
7	Motions in limine should be filed pursuant to Local Rule CR 7(d)(4) by	August 7, 2023	
8			
9	Agreed pretrial order filed with the Court by	August 21, 2023	
10			
11	Pretrial conference will be held by 9:00 AM on	September 1, 2023	
12			
13	Trial briefs, proposed voir dire, jury instructions, agreed neutral statement of the case and deposition designations due by	August 21, 2023	
14			
15			
16			
17	Trial	September 11, 2023	May 28, 2024

CONCLUSION

For the foregoing reasons, the Parties jointly stipulate to a continuance of the trial date and pretrial deadlines as indicated above, and jointly move the Court for an order continuing the trial date to **May 28, 2024**.

1 DATED this 5th day of May , 2023.

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3
4 **WEST LAW FIRM, P.S.**

DKM LAW GROUP, LLP

5 By: _____
6 Patrick R. West, WSBA No. 41949
7 Attorney for Plaintiff


By: _____
Brian R. Davis, WSBA No. 53414
Mitchel F. Wilson, WSBA No. 49216
Attorneys for Defendant

8
9 **ORDER**

10 Pursuant to the above Stipulated Motion to Continue Trial Date and Related Dates
11 and to Amend Case Schedule, it is hereby ORDERED as follows:

- 12 1. Trial in this matter is continued to **May 28, 2024**;
13 2. The clerk is directed to amend the case schedule as set forth in the parties'
14 foregoing Stipulated Motion.

15 SO ORDERED this 5th day of May, 2023.

16
17
18
19 
20 _____
21 David G. Estudillo
22 United States District Judge
23

1 Presented By:

2
3 **WEST LAW FIRM, P.S.**

DKM LAW GROUP, LLP

4 By: _____
5 Patrick R. West, WSBA No. 41949
6 Attorney for Plaintiff

By: _____
Brian R. Davis, WSBA No. 53414
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